IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Regular Second Appeal No.3418 of 2004

Date of decision: 03.08.2007

Mewa Singh ... Appellant

Versus

Smt. Saraswati Devi and another ... Respondents

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CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

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Present: Mr. Sandeep K. Sharma, Advocate
for the appellant.

None for the respondents.

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This is defendant's second appeal against the judgments and decrees passed by both the Courts below.

2. Briefly, the facts are that the respondent-plaintiff filed suit for possession of the house situated at Village Khijrabad Tehsil Kharar District Ropar. It was claimed that the respondent-plaintiff, who was a government servant, had given the house on rent to the appellant at the rate of Rs.500/- per month. After his retirement, when the appellant-defendant was requested to give possession of the house, the same was not vacated. Accordingly, a notice under Section 106 of the Transfer of Property Act, 1882 was served and thereafter the suit was filed by the respondent claiming possession as well as recovery of arrears of rent with effect from January 1, 1997 at the rate of Rs.500/- per month. In response to the notice of the suit, the appellant-defendant contested the claim while submitting that he is in

possession of the house in dispute as owner thereof as the respondent had entered into an agreement to sell the house to the appellant on October 1, 1996 and earnest money of Rs.30,000/- out of total sale consideration of Rs.90,000/- was paid then. Thereafter the appellant had even spent a sum of Rs.40,000/- on the renovation of the house. On account of failure of the appellant-defendant to produce the evidence on the date fixed and rejection of his request for adjournment for the purpose, the evidence of the appellant-defendant was closed by order of the Court and on the same date the suit of the plaintiff was decreed. In appeal against the judgment and decree of the trial Court, the appellant specifically raised the issue regarding non-grant of proper opportunity for production of evidence referring to the agreement entered into between the parties for the sale of the house in dispute and the appellant-defendant being in possession of the house being owner thereof. However, learned lower Appellate Court did not accede to the request of the appellant-defendant for granting him another opportunity to lead evidence to prove his case. The appellant-defendant had not denied the ownership of the house of the respondent-plaintiff. Rather, he had claimed that vide agreement dated 1.10.1996, the respondent-plaintiff had entered into an agreement to sell the house to the appellant. In fact, the agreement had been confronted to the respondent-plaintiff in his cross-examination and was placed on file as Mark 'B'. However, since the appellant-defendant could not lead evidence, the same could not be proved by producing the witnesses or other material and in the absence thereof the appellant-defendant failed in both the Courts below.

3. I have heard the learned counsel for the appellant and with his assistance have gone through the judgments of both the Courts below. No one has appeared on behalf of the respondents today despite service and appearance of the counsel for the respondents on earlier dates.

4. The primary contention raised by the learned counsel for the appellant is that the order passed by the learned trial Court closing the evidence of the appellant-defendant by order of the Court was not proper as before passing such a harsh order, an order with lesser gravity should have been passed, such as, imposition of costs. To buttress the argument, he relied upon a judgment of this Court in **Ishwar Singh** v. **Umraowati**, 2000 (3) Civil Court Cases 116. Further, he submitted that the trial Court even after closing the evidence of the appellant-defendant by order of the Court, should have adjourned the case to some other date for arguments and consideration so as to give an opportunity to the appellant to avail of the remedies against the order closing his evidence. Still further, he submitted that the learned trial court decreed the suit of the respondent-plaintiff on the same date when his evidence was closed by order of the Court. The issue having been raised by the appellant-defendant before the lower Appellate Court was also not considered by it which resulted in miscarriage of justice to the appellant.

5. Having heard the learned counsel for the appellant, I find merit in the submissions made by him.

6. No doubt the appellant had been granted five opportunities to lead evidence. However, before closing the evidence by order of the Court, one opportunity with imposition of costs, could very well be granted to the appellant-defendant keeping in view the peculiar facts and circumstances of the case. The agreement to sell entered into between the parties, on which reliance was placed by the appellant-defendant, was already on record as Mark 'B'. It is a vital document for complete justice between the parties.

7. Accordingly, the appeal is allowed, the judgments and decrees of

both the Courts below are set aside and the matter is remitted back to the trial Court for fresh decision after affording one opportunity for leading evidence to the appellant-defendant. The same is subject to payment of Rs.10,000/- as costs to the respondent-plaintiff.

8. The parties are directed to appear before the learned trial Court on September 10, 2007 for fixing a date for leading of evidence by the appellant-defendant.

9. The present appeal is disposed of accordingly.

(RAJESH BINDAL)
JUDGE

August 03, 2007

RS